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SUBJECT: CYPRUS: 2009 SPECIAL 301 REVIEW

REFS: (A) STATE 8410, (B) 08 NICOSIA 0126

(U) This cable is sensitive but unclassified. Please treat accordingly.

1. (SBU) Summary and Comment. Further to Ref A request, post submits our input for USTR's 2009 Special 301 review of country IPR practices. (Note: This report covers mainly the government-controlled area of Cyprus. A separate section is devoted to the area administered by Turkish Cypriots, where IPR piracy is more widespread.) In 2008, Cyprus made further progress combating IPR abuses, despite problems facing the Cyprus Police in their efforts to successfully prosecute IP pirates. The Police attribute these problems to lack of cooperation from rights holders, stemming from reduced funding. Post predicts a worsening of piracy during 2009, unless this situation is rectified soon. We are working with both the private sector and local authorities to try and find a solution to this problem.

2. (SBU) Post does not/not recommend including Cyprus on the watch list. IPR legislation in the area controlled by Turkish Cypriots remains antiquated with limited resources or interest in enforcement. Post plans to hold its fourth international IPR seminar in Cyprus in April 2009 (April 9 in the government-controlled part, and April 10 in the area administered by Turkish Cypriots). Post encourages participation of USG IPR experts in this workshop.

End Summary and Comment.

Optical Media Piracy

3. (SBU) Cyprus' main IPR problem remains optical media piracy, facilitated in part by advances in computer technology. Motion picture piracy is estimated at 50 percent, and music piracy at 40 percent, although the figures are somewhat dated. Pirate optical discs (CDs, VCDs, and DVDs) are no longer sold at kiosks, although they are still used widely by DVD rental clubs.

4. (SBU) There are approximately 125 DVD rental shops on the island. Only a small percentage of these rent exclusively legitimate product (i.e., original, licensed region 2 disks). Many carry both region 1 and region 2 disks. Multi-region players are readily available. A smaller percentage of shops rent illegally-duplicated disks, most of which have been locally burned on DVD-/R media. During 2008, the combination of more frequent

police raids and stricter fines by the courts has helped keep in check the number of pirated products visibly on display at DVD rental shops. There is no indication of domestic, large-scale, organized, mass-production piracy for the export market.

¶15. (SBU) Since 2007, and after extensive consultations with POVEK (the shop-keepers' union), the GOC implemented new regulations concerning the kinds of items that can be sold by retail establishments including kiosks. This new policy, although not specifically directed against piracy, had an unexpectedly positive impact against piracy as it prohibited kiosks from selling CDs and DVDs, including even legitimate copies. Given the pervasive nature of piracy through kiosks before this new policy, this measure has significantly reduced the availability of pirated CDs and DVDs to the public.

Software Piracy

¶16. (SBU) The rate of software piracy in Cyprus is currently estimated at 51 percent. While slightly above the EU average, this figure represents a considerable improvement since 1994, when software piracy was estimated at 77 percent. The most common form of software piracy in Cyprus occurs through local PC retailers, often loading new PCs with unauthorized software copies.

¶17. (SBU) The International Intellectual Property Alliance (IIPA) had included Cyprus in its "special mention" category (one notch below recommending inclusion on the watch list) in its 2006 Special 301 report, estimating that, in 2005, the rate of business software piracy in Cyprus was 53 percent, causing losses of USD 5.9 million to the industry. Since 2007, though, Cyprus has been off the special mention list in the IIPA's Special 301 report.

Use/Procurement of Government Software

¶18. (SBU) The GOC is much more scrupulous than the private sector in abiding by national and international copyright laws for government software. The GOC Department of IT Services (under the Ministry of Finance) issued in 1998 a circular to all government departments expressly forbidding the use of pirated software on GOC machines, subject to administrative action for violators and their supervisors. In 2008, the GOC signed an MOU with Microsoft licensing Microsoft operating systems and productivity software for all government PCs including those in schools.

Merchandise Piracy

¶19. (SBU) According to our sources in the field, merchandise piracy has decreased significantly in recent years, largely thanks to aggressive enforcement by the Department of Customs and the police.

Other Forms of Piracy

¶10. (SBU) Despite Cyprus' adoption of a recent EU directive against online piracy, anecdotal evidence suggests Internet piracy is on the rise, although still below U.S. or EU levels. With only 20 percent of Cypriot households utilizing broadband connections, downloading pirated digital content will likely increase as broadband penetration expands. In order to counteract the advances in digital technology, more innovative approaches are required by the rights-holders and the Cypriot authorities. During 2008, the Police dismantled a ring offering illegal TV satellite packages to 547 subscribers. The police came across this new form of crime by chance, while investigating cases of illegal electronic gambling. They were looking for servers running illegal betting games but found that content distribution was via an illegal satellite TV. The man in charge of the ring legally bought access cards from a satellite TV provider and then shared the access code with his customers at a discount. The Police arrested this person and seized nine servers as evidence. It is believed that this is only the tip of the iceberg, with many other such operations still in existence. The police plan to utilize a 2002 law regulating services to prosecute these offenders.

¶11. (SBU) College textbook piracy has been dealt decisive blows over the last few years, largely thanks to a recent, high-profile law suit against a copy shop near the University of Cyprus. The confiscation by the police of the shop's copying machines, followed by the successful prosecution in court of the offender sent out a strong message to others. Additionally, the University of Cyprus and other tertiary education institutions have adopted increasingly stringent policies against textbook piracy.

Legislation

¶12. (U) Cyprus is fully compliant with TRIPS and has modern IPR legislation, which it continues to upgrade, in line with EU requirements. Currently, there are several different laws covering IPR issues including a Copyright Law, a Trading Standards Law, and legislation regarding customs and the obligations of importers and the empowerment of the customs authorities. Other minor laws are also used to enforce IPR protection.

¶13. (SBU) The existing array of local IPR legislation was significantly reinforced with the addition of Law 103/2007, which came into effect on December 12, 2007, bringing Cyprus in line with EU Directive 29/2005 on Unfair Commercial Practices. This new law provides stiff administrative penalties (up to Euros 250,000) for traders exhibiting or offering for sale products that mislead consumers. The Ministry of Commerce's Consumer Protection Service, tasked with implementing this law, hired three additional staff members during 2008 to help with its implementation. The Service intends to use this new law to prosecute, among other offences, trademark and copyright violations. Significantly, the burden of proof in this legislation, unlike most other laws in Cyprus, rests on the defendant (unless he or she can justify an appeal to the Supreme Court), making enforcement relatively easy.

¶14. (SBU) Other recent laws serving the same purpose included Law 133(I) of 2006, which came into effect on October 20, 2006, concerning products violating IPR. This law helped Cyprus harmonize fully with EU directives 2001/84 and 2004/48 by amending earlier Cypriot legislation. These amendments provided steeper and recurring fines for pirates and introduce a "name and shame" policy for pirates in the Official Gazette. In short, these amendments reinforce the rights of original creators of works of art.

¶15. (SBU) Important amendments to the copyright law were also introduced in 2002, reinforcing the presumption of ownership, particularly in software cases, and facilitating the admission of pirated material as evidence by the court. The amendments also increased maximum penalties for piracy: from two years imprisonment and a fine of around USD 3,000 to three years and a fine of around USD 63,000, or more for second-time offenders. Significantly, this increase in penalties allows the police to raid businesses suspected of being engaged in piracy without having to obtain a search warrant. Over the last two years, the courts have been quite strict about piracy both in terms of definition and penalties.

¶16. (SBU) Similarly, tougher laws on indecent publications have also helped the police crack down on pirated pornographic material (videos and DVD's) available through kiosks etc. Since pirates of pornographic material are also frequently pirating other movies and CDs, the crackdown on the pornography industry has also led to significant seizures of pirated non-pornographic optical discs and videos.

Enforcement

¶17. (SBU) Three different GOC agencies share responsibility for IPR enforcement on Cyprus: the Police, Department of Customs and the Consumer Protection Service (CPS) of the Ministry of Commerce and Industry. Each of the three agencies uses one or several of the laws described above, trying to tackle IPR enforcement from its own perspective. Cooperation among these three agencies is still less than perfect, although it has improved considerably in recent years, with active help from the Embassy (mainly through workshops and seminars).

¶18. (SBU) The Police spearhead the GOC's anti-piracy efforts and their periodic market sweeps for pirated products have effectively reduced the amount and incidence of illegal material. Additionally, since Cyprus' EU accession on May 1, 2004, the Department of Customs has shown increased interest in IPR enforcement due to legislative changes providing it with enhanced enforcement tools. The Consumer Protection Service continues to be the laggard domestically in IPR enforcement, although the recent passage of the law on Unfair Commercial Practices allows some optimism that it will take a more active stance in the future (see para. 13 above).

Police Efforts Grinding to a Halt

¶19. (SBU) The Cyprus Police remain the key enforcer of anti-piracy legislation. However, their efforts are increasingly frustrated by a reduction in assistance and cooperation from rights holders. Unless this situation is reversed quickly, the Embassy foresees a risk that Police efforts will be significantly reduced in 2009. The following letter from the Police to the Embassy (submitted under cover of MFA Note Verbale Ref. No. 03.13.011, dated February 18, 2009) illustrates the problem:

Begin text of Police Letter:

The Cyprus Police have assumed fully its share of responsibility for the protection of IPRs of all citizens in Cyprus, and not just those of US nationals.

As you know, in November 2004, the Police Headquarters established our office, now staffed by three officers, dealing exclusively with implementing this legislation. Additionally, since 2008, IPRs have been introduced in the Police Chief's four-year plan, meaning that specific targets have now been set, and the whole process is being monitored systematically to ensure accomplishment of these goals.

Under this framework, the police have conducted many raids, seized material appearing to infringe on IPR laws, and initiated legal proceedings, as per the attached annex.

Based on prevailing law currently applied in Cyprus, under which the burden of proof rests with the prosecuting authorities, the confiscated evidence must be examined by an expert/authorized representative of the IP rights holder, who must then appear before Court and testify that the confiscated articles are not authorized reproductions, beyond any reasonable doubt.

It should be noted that the Police confiscate articles on suspicion that they are unauthorized reproductions. These articles are then presented to the Court, which issues a temporary restraining order to hold the articles for 15-30 days, until the expert/authorized representative of the rights holders has a chance to examine the evidence. Upon its expiration, this order must be renewed, a process that is both time-consuming for my staff, and also attracting negative comments from the Court. There is also the risk that the Court will refuse to renew restraining orders, regardless of the expert's workload, because such renewal cannot take place indefinitely since there is commercial property involved.

Regarding film piracy, the Cyprus Police cooperated until 2008 with the Cyprus Federation Against Copyright Theft (CYFACT), an employee of which examined digital discs/DVDs as to their authenticity. During 2007, CYFACT informed us that, as of December 1, 2007, it would not be in a position to continue offering the above-mentioned assistance, since the Motion Picture Association (MPA) had cut its funding. Senior executives of the Company for Protection of Audiovisual Works (EPOE) in Greece (Ed. Note: also affiliated with MPA) assured us that this would not create a problem, since they were planning to set up a similar body in Cyprus to undertake this task. Unfortunately, and despite all the assurances we have received, (correspondence with EPOE attached) the establishment of this office is still pending until today. In the event, evidence examination continued by the same expert/representative during 2008 after his salary was paid by a certain Cypriot businessman. Since the beginning of 2009, we have had a serious disruption of our planned anti-piracy activities for 2009 due to the continuing uncertainty as to whether or not EPOE will set up a similar company in Cyprus, or whether or not they will appoint a local

expert/representative.

A similar situation exists regarding musical works. The International Federation of the Phonographic Industry (IFPI) used to employ one person in Cyprus until 2008. However, this person has now resigned, after giving a six-month notice. Once again, since the beginning of 2009, the appointment of a representative in Cyprus is pending, creating operational difficulties for the Police in 2009.

Additionally, and with the exception of Microsoft, there is no authorized representative of other software companies manufacturing gambling software on digital discs.

Regarding computer software, up until June 2008, there was no representative of rights holders in Cyprus. Finally, the Business Software Alliance (BSA), hired a certain person to assist in this effort. However, it has been established that this person lacks the technical expertise to operate a computer if the computer requires the use of a password. Specialized Police units can easily operate these computers but they cannot retrieve the software's Serial Key, since they lack the necessary authorization. The Police have informed repeatedly BSA's legal advisor in Cyprus about this problem, but without any progress to date.

Finally, in the IPR Workshop that took place on March 29, 2007 in Nicosia, Ms. Wendy Copage, representative of publishing houses abroad, complained about book piracy in our country. I personally informed Ms. Copage then of the need to appoint a representative in our country, who would examine evidence so we can prosecute offenders. In September 2007, a representative was appointed and the Police conducted three raids on Nicosia bookstores, initiating legal proceedings against them. Unfortunately, the designated representative was incredibly late in examining the evidence. His last report was filed late in the evening on September 3, 2008 -

fully one year after the seizures, and after we informed him that we would cancel six operations planned for early in the morning on September 4, 2008, until he cleared pending cases. It took him another four months (January 2009) to examine the 160 books we seized during those six raids - to the point where the Court warned us that this was the last time it would renew the restraining order for the books.

Our office's action plan calls for filing charges against 345 cases in 2009. The first month of this year has already passed and the representatives of both film and music companies have not yet appointed authorized experts/representatives on the island, and have not even clarified their intentions. At the same time, BSA's representative needs to upgrade his computer skills in order to meet his job requirements. In all cases, measures will need to be taken to ensure the timely examination of evidence and submission of relevant reports to allow a timely processing of these cases before justice.

In conclusion, I wish to reiterate that the Police have the will to uphold IPR legislation in our country. At the same time, though, for our effort to be successful, we must have cooperation from rights holders with the prosecuting authorities. I invite your assistance in helping to resolve these problems.

(Signed)
Nicos Chrysostomou
Inspector
Head of Office for Combating Intellectual Property Theft and Illegal Gambling
Cyprus Police Headquarters

End text of Police Letter.

20. (SBU) The Embassy is trying to mediate between the police and representatives of rights holders to resolve the situation. The biggest issue appears to be the lack of funds because rights holder organizations (e.g. MPA, IIPA) have excluded Cyprus (and now, we understand, Greece) as countries to which they will provide financial support.

21. (SBU) Despite the mounting problems, last year the police

turned in another year of excellent results in fighting piracy. During 2008, the Police conducted 477 operations to check various establishments (compared to 305 operations in 2007). Of these, the Police filed charges against 336 cases (compared to 188 cases in 2007), broken down as follows: 192 for unauthorized copies of digital discs, 138 for unauthorized software, and 6 for unauthorized book copies. During these raids, the Police seized 185,859 items as evidence (against 188,516 items in 2007). The material seized in 2008 includes 1,374 personal computers with software suspected to be unauthorized -- an unprecedented number for Cyprus.

Customs Cracks Down on Imported Pirated Merchandise

122. (SBU) Cyprus' accession to the EU in May 2004 has allowed the Department of Customs to divert resources from its traditional revenue-collection work at Cypriot ports of entry to new areas such as better IPR enforcement. Customs has made good use of legislation adopted in 2002 granting it enhanced authority to detain (for up to three days) goods or products suspected of being counterfeit until the true identity of the IPR holder is established. Customs also credits U.S.-provided non-proliferation training and equipment with improving Customs ability to interdict counterfeit goods. In an innovative approach, Customs now audits retail shops to identify imported counterfeit merchandise that has slipped through the port of entry. Customs then traces the supply chain back to the importer for possible action and also uses this information to improve its screening system. Furthermore, to overcome weaknesses in the evidence law that often prevented Customs from pursuing a case within the three-day detention period, Customs cooperates with the Ministry of Commerce to seize the counterfeit goods under its administrative detention authority.

123. (SBU) In 2008, Customs conducted dozens of raids, seizing thousands of counterfeit products. During last year, the total value of these seizures reached USD 254,310, compared with USD 155,868 in 2007. Seized items included mainly cheap imitations of well-known brands of merchandise (e.g. clothing, towels, shoes, bags, wallets, perfumes, and sunglasses) and smaller quantities of pirated optical and audio material. Most of the seized goods originated from the Far East (Hong Kong and China), while smaller numbers came from Lebanon, Greece, Russia, and the United States.

High Hopes for Consumer Protection Service

124. (SBU) During 2008, the Ministry of Commerce's Consumer Protection Service hired an additional three persons to help with the implementation of the Unfair Commercial Practices law, passed the year before (see legislation). The Embassy remains hopeful that the Consumer Protection Service will gradually become more actively involved in the fight against IPR piracy.

Impact of Piracy

125. (SBU) It is difficult to measure the actual impact of piracy and counterfeit goods on legitimate businesses but, overall, the trends in the legitimate market seem reassuring. For example, in the cinema business, total cinema ticket sales have gone from 801,000 in 2006, to 849,000 in 2007, to around 1 million in 2008. About six new theater screens came on line in 2007, mostly in multi-screen complexes, although several smaller theaters were shuttered. There are now 34 modern cinema screens on the island, compared to 40-45 in 2002 (although only 12 existed in 1992). Of the 34 screens, 22 belong to the same operator. In other words, cinema attendance has been growing slowly, and we have witnessed considerable consolidation in the cinema business, with multi-screen complexes on the rise elbowing small theaters out of the market. Similarly, licensed goods merchandisers are reporting steadily increasing sales of their merchandise over the last two years as a result of the effective interdiction of counterfeit goods by Customs.

Area Administered by Turkish Cypriots

126. (SBU) The IPR situation in the area of Cyprus administered by

Turkish Cypriots (i.e., the self-declared "Turkish Republic of Northern Cyprus," which is only recognized by Turkey) is, in general, far worse than in the government-controlled area. IPR legislation is antiquated (for example, the basic copyright law is based on the 1911 Imperial Copyright Law, without any amendments whatsoever in recent years) and the authorities have shown little or no initiative in combating piracy. The Embassy has sponsored a series of IPR workshops in the north (the last two being in March 2007 and November 2005) with support from the Turkish Cypriot Chamber of Commerce. However, these efforts have so far failed to produce the desired result. After the 2005 workshop, the Turkish Cypriot authorities committed to drafting modern, EU-compatible, IPR-related legislation, and Turkish officials were invited to stage an IPR training program. The Turkish Cypriot authorities, however, have identified the adoption of other needed legislation (e.g. on money laundering and casinos) as greater priorities, and little progress has been made on new IPR laws to date.

¶27. (SBU) DVD and audio media piracy is almost universal (often victimizing Turkish artists). Most pirated CD and DVD copies are imported from Turkey - although some shops openly burn CDs and DVDs on demand. Merchandise piracy is also rife. Counterfeit apparel, shoes, and luggage are freely available. Software piracy is estimated at over 90 percent and even the "government" uses pirated software. College textbook piracy is also the norm in north Cyprus' thriving tertiary education community. Finally, several local television stations continue broadcasting recent television and movie releases without permission, although the problem has reportedly decreased in recent years due to protests by cinema owners.

¶28. (SBU) Although dated, a law concerning counterfeit products (dubbed the "Passing Off" legislation, based on the Civil Wrongs Law under British Common Law) has been used in recent years to prosecute merchandise pirates in the area administered by Turkish Cypriots. Such cases include counterfeit cigarettes, tea, and beer. The law prevents pirates from using similar-sounding names or identical logos to promote their products.

¶29. (SBU) There have been no recent court cases involving optical media. Post is aware of only one case to date involving optical media piracy being brought to court. This was several years ago when the legitimate IPR holders for the movie "Titanic" obtained an injunction forbidding local TV stations to broadcast the movie prior to its release on the big screen, using another law concerning publications. The pirates "mistake" in this case (which they have not repeated since) was that they advertised the release several months ahead.

"Green Line" Concerns

¶30. (SBU) The semi-porosity of the "Green Line," the UN-patrolled buffer zone dividing the two parts of the island, is another concern from an IPR perspective. We believe a good portion of the illegal activity currently taking place in Cyprus, from narcotics to human trafficking, involves this sensitive area. A recent development potentially compounds the problem: on June 16, 2008 the European Council amended the "Green Line Regulation" to further facilitate inter-community trade on the island. Under this amendment, the total maximum value of goods contained in the personal luggage of persons crossing the Line is increased from Euros 135 (USD 198) to Euros 260 (USD 382) so as to encourage the economic development of the Turkish Cypriot community. Goods up to this amount can now be transported free of customs, excise duties and taxes across the Line into the government-controlled areas of the Republic of Cyprus. Given the slack Customs checks across the divide, there is increased risk of more counterfeit products filtering from north to south.

Comment

¶31. (SBU) Post does not/not recommend listing Cyprus (the government-controlled area) in this year's Special 301 review. We do recommend, however, that US rights holders (particularly, the MPA, IFPI, and BSA) increase (or, rather, reinstate) funding for their representatives in Cyprus. The amounts involved are trivial - an annual budget of USD 40,000 for the salary of one expert would take care of the problem for the film and music industries.

¶32. (SBU) In the northern part of the island, IPR piracy is much worse. However, given current political realities, it would be very hard to list this part of Cyprus (not recognized by the USG) under the Special 301 review as a separate entity.

¶33. (SBU) Post continues to advocate better education and awareness. In this vein, Post will again organize two separate IPR workshops in both parts of the island on April 9 in the south, and April 10 in the north. We have already secured the participation of USDOJ's Matthew Lamberti, Intellectual Property Law Enforcement Coordinator for Eastern Europe, out of Sofia, Bulgaria (among other speakers) but would welcome additional speakers as appropriate. It would be particularly useful if we could obtain an expert speaker on EU IPR law for the event in the north on April 10.

¶34. (SBU) Post also welcomes increased training opportunities for GOC IPR officials, whether in the United States or in Cyprus. Experience has shown that the GOC will not take advantage of training opportunities unless fully funded by outside sources. End comment.

URBANCIC